

Applicants second note that the issues presented on page 3 of the Office Action for the 35 U.S.C. §112, first paragraph, rejection are not the same as the issues presented on pages 8-10 of the Office Action ("Response to Arguments") the 35 U.S.C. §112, first paragraph, rejection. The following comments will focus on the issues presented on page 3 of the Office Action because it is those issues the currently make up the Examiner's ground for rejection.

With page 3, paragraph 1, Applicants assert that claim 12 has been improperly interpreted. As argued during the personal interview, claim 12 must be read as a whole and not in pieces as provided in the Office Action. During the personal interview, the Examiner continued to focus only on "braking force on the rear wheels is lowered" without considering the rest of the clause. Claim 12 recites "a controller that executes a braking force distribution control in which braking force on the rear wheels is lowered in comparison with braking force on the front wheels when an operational condition monitored by a sensor among the at least one sensor satisfies a predetermined condition for starting the braking force distribution control" (emphasis added).

As clearly illustrated in Applicants' Fig. 3A, for example, at point Fc (which is a point when an operational condition monitored by a sensor among the at least one sensor satisfies a predetermined condition for starting the braking force distribution control), the braking force on the rear wheels Fr is maintained at the same value while the braking force on the front wheels Ff is increased. Thus, in comparison with the front wheels, the braking force on the rear wheels Fr is lowered in comparison with the braking force on the front wheels Ff because the braking force on the front wheels Ff increases as the braking force on the rear wheels Fr remains the same. Claim 12 should not simply be interpreted to mean that the braking force on the rear wheels is lowered. Claim 12 should be interpreted to mean that the braking force on the rear wheels is lowered in comparison with braking force on the front wheels, as specifically called for in claim 12.

During the personal interview, the Examiner only focused on Applicants' claims without viewing Applicants' specification. However, an analysis of whether the claims are supported by an enabling disclosure requires a determination of whether that disclosure contains sufficient information regarding the subject matter of the claims so as to enable one skilled in the pertinent art to make and use the claimed invention. See, *United States v. Telectronics, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir, 1988), cert. denied, 109 S.Ct. 19 54 (1989); *In re Stephens*, 529 F.2d 1343, 1345, 188 USPQ 659, 661 (CCPA 1976).

As clearly illustrated in Applicants' Figs. 3A and 3B, and the corresponding description on page 19, line 2-page 21, line 4, for example, the pressure Pf for the front wheels incrementally increases while the rear wheel cylinder is held at Pc. As the pressure Pf for the front wheels continues to incrementally increase while the rear wheels are held at Pc, the amount by which the braking force for the rear wheels is lower in comparison with the braking force for the front wheels continues to increase during execution of the braking force distribution control. Because the amount by which the braking force is lower continues to increase as the braking force on the front wheels continues to incrementally increase, the braking force on the rear wheels is being lowered in comparison with the braking force on the front wheels. Applicants' specification thus provides sufficient information in order to provide an enabling disclosure. Contrary to the Examiner's argument during the personal interview, the braking force on the rear wheels does not have to actually be lowered in order for the braking force on the rear wheels to be lowered in comparison with the braking force on the front wheels.

On page 3, paragraph 2, the Office Action asserts that "during execution of the braking force distribution control" is recited twice in the same sentence. However,

Applicants note that the February 1, 2007 Amendment removed the first use of "during execution of the breaking force distribution control."

On page 3, paragraph 2, the Office Action asserts that it is contradictory to recite that a "braking force on the front wheels is increased during execution of the braking force distribution control, but decreased when anti-skid control for either of the wheels is executed" because the anti-skid control occurs as a part of the braking force distribution control.

Applicants disagree.

As clearly discussed on page 22, line 7-page 23, line 13 of Applicants specification, when a braking force on either of the front wheels becomes high and a front wheel is thus rendered locked, an anti-skid control is performed. However, if the braking force distribution control is abruptly cancelled, a disturbance of the vehicle attitude would be created. As a result, an anti-skid control occurs during a braking force distribution control in order to avoid the disturbance. In other words, the braking force being decreased is an exception to the general rule that a braking force on the front wheels is increased during execution of the braking force distribution control. Such an exception is clear, enabled, and would be understood by one skilled in the art.

During the personal interview, the Examiner was requested to explain his understanding of how an anti-skid control is performed during the execution of a braking force distribution control. During the personal interview, the Examiner was able to provide a correct interpretation. Applicants thus assert that it is improper for the Examiner to state that such an exception is not enabled, and would not be understood, when the Examiner himself was able to provide an example.

Page 3, paragraph 3, the Office Action asserts that it is not clear what is meant by "either of the wheels." As clearly used in claim 12, either of the wheels refers to either of the front wheels. As recited in claim 12, "braking force on the front wheels is increased during

execution of the braking force distribution control, but decreased when anti-skid control for either of the wheels is executed."

It is respectfully requested that the rejection be withdrawn.

Claims 1-15 were rejected under 35 U.S.C. §102(b) over Banno et al. (Banno), U.S. Publication No. 2002/0024252. The rejection is respectfully traversed.

As previously argued, Banno fails to disclose the controller that is structured as recited in claims 1 and 12. In view of the discussion for the rejection of claim 12 under 35 U.S.C. §112, first paragraph, and the argument presented in the February 1, 2007 Amendment, Banno fails to disclose all of the features recited in the claims.

Applicants will now focus on the arguments presented at the bottom of page 7 to page 10 of the Office Action.

Not every controller is structured (i.e., programmed) the same and not every controller operates the same. How a controller is structured must be given patentable weight and Banno must be reviewed to determine if Banno's controller is structured in accordance with the features recited in claim 1 and 12. The fact that Banno discloses a controller does not mean that Banno's controller has the same structure as the controllers of claims 1 and 12. In addition, the claim language used for the controllers in claims 1 and 12 is an acceptable way of defining how the controller is structured.

The mere fact that Banno discloses a braking system, at least one sensor and a controller does not mean that Banno's structure is capable of performing as recited in claims 1 and 12. Not every controller is structured the same and Banno fails to provide any disclosure with regard to having their controller structured such that it is capable of braking a vehicle as recited in claims 1 and 12.

Claims 1 and 12 do not recite statements of intended use or field of use such that they do not patentably distinguish over Banno. As discussed above, the claims define how the device is

structured. Nowhere in the MPEP, or the cases cited in the Office Action, is it suggested that "executing a" or "is lowered", for example, should be interpreted as being functional.

Furthermore, claims 1 and 12 recite how the controllers are structured. How the controllers operate must be given patentable weight.

During the personal interview, the Examiner suggested that Applicants amend claims 1 and 12 to recite that the controller is "configured to." Again, nowhere in the MPEP, or in the cases cited in the Office Action, is it suggested that using the term "configured to" is required in order to avoid functional language.

The first set of cases listed on page 8 of the Office Action are for claims directed to machinery that works upon an article or material in its intended use (for example, a claim directed to making a concrete beam includes a limitation to the concrete reinforced members made by the machine and the structural elements of the machine itself). The first set of cases do not apply to claim 1 and 12 or have any relevance to claims 1 and 12 because claims 1 and 12 are directed to a device for controlling a braking of a vehicle. In other words, the device for controlling a braking of a vehicle as recited in claims 1 and 12 is not working on an article or material.

The second set of cases listed on page 8 of the Office Action are directed to claims that recite a manner to which a claimed apparatus is intended to be employed. Claims 1 and 12 do not recite a manner in which braking is intended to be employed but is positively setting forth how braking is employed. For example, in *Ex Parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App & Inter. 1987), the preamble of the claim recited a mixer for mixing flowing developer material. As such, the claim was limited to the structure of the mixer with the structure of the developer material being irrelevant. Conversely, Applicants claims 1 and 12 recite a device for controlling a braking of a vehicle. The structure of the device includes a braking system, at least one sensor

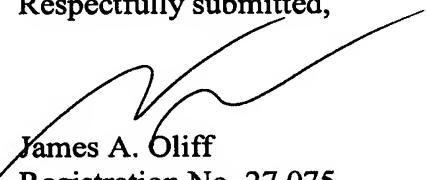
and a controller, with the structure of the controller (i.e., what the controller is) being defined in claims 1 and 12.

It is respectfully requested that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:

Petition for Extension of Time

Date: July 20, 2007

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